

**BOARD OF REGISTERED NURSING**

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Executive Officer**SCOPE OF PRACTICE OF HOME HEALTH AIDES
& NURSING ASSISTANTS**

With the advent of DRGs resulting in the early discharge of hospital patients, plus decreasing funds for nursing care in hospitals, the Board has received several inquiries regarding the legality of delegating functions presently performed by registered nurses to other categories of nursing personnel, specifically home health aides and certified nurse assistants.

The legal office of the Department of Consumer Affairs has provided the Board with an opinion that unlicensed persons may not provide services which are the practice of nursing as defined in the Nursing Practice Act (B&P Code Section 2725).

The scope of practice of nursing assistants and home health aides is spelled out in Title 22, Sections 72331, 74709, 74745, 74747 and 74749, which delineate the content required by the Department of Health Services in mandatory courses for these categories of nursing personnel employed in long-term care facilities and home health agencies licensed by the State.

As described in Section 2725(b), the practice of registered nursing is characterized as requiring "a substantial amount of scientific knowledge or technical skill." Certified nurse assistants and home health aides, as described in the content required in DHS mandated certification programs, are limited to services described in 12 Ops. Cal. Atty. Gen. 228, 229, 230 (1948) as "generally consisting of only ministerial or physical care services." For example, "application of clear dry dressings and bandages" is included in the certification program, but sterile dressings are not; "care of the patient with a catheter" is included, but catheterization is not. In regard to the home health aide, "assisting with medications that are ordinarily self-administered" is listed in the duties of the home health aide as enumerated in Title 22, Section 74709, but the brief (120 hrs.) home health aide course does not include the knowledge of pharmacology needed to safely administer medications to the extent that they are administered by licensed nurses.

In determining whether a particular function may safely and legally be performed by nurse assistants and home health aides, or must be limited to the licensed nurse, an examination of the pertinent sections of Title 22, plus the definition of nursing as described in the Nursing Practice Act, should provide an answer.

NURSING FUNCTIONS PERFORMABLE BY NON-NURSES IN THE PATIENT'S HOME

The Attorney General has recently issued an opinion on the following

QUESTION:

May a home care companion hired to perform services in the employer's home lawfully administer drugs to or engage in nasogastric tube or gastrostomy feeding of the employer when the companion is (a) unlicensed and uncertified, (b) a certified nurse assistant, or (c) a certified home health aide?

CONCLUSION:

A home care companion hired to perform services in the employer's home, whether certified as a nurse assistant or home health aide or uncertified and unlicensed, may lawfully administer nonprescription drugs but not controlled substances to the employer in the employer's home; and may not lawfully engage in nasogastric tube or gastrostomy feeding of the employer in the employer's home.

A summary of the Attorney General's analysis of the opinion follows.

Definitions

The word "administer" in the question is understood to refer to the direct application of a drug into the body of a person, and the word "drug" to be synonymous with medication, and both to mean articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man.

A "home care companion" is one employed to provide companionship and attend to the personal needs of the employer, and whose purpose for employment is not confined to the health care of the employer.

Legal Restraints on Administration of Drugs

In reaching conclusions on the question, laws regulating the administration of drugs and any exemptions thereto were examined and applied to the administration of drugs by unlicensed and uncertified home care companions, certified nurse assistants and home health aides.

The Health and Safety Code

The California Uniform Controlled Substances Act, (Section 11000 et seq. of the H&S Code), closely regulated many drugs classified therein as controlled substances. The act has many restrictions, one of which (Subsection 1154.a) prohibits anyone from administering a controlled substance to anyone who is not under his or her treatment for a disease.

Section 1337 provides for the certification of nurse assistants and regulation section 74745 of Title 22 provides for the certification of home health aides. **Authority is not provided, however, for either of these two classifications to act with respect to drugs in an employer's home in a manner which exceeds that of an unlicensed and uncertified companion.**

The Medical Practice Act (Business & Professions Code, Chapter 5)

Section 2051 authorizes a licensed physician to use drugs upon humans in the treatment of disease. The phrase "administration of drugs" is not used, and the physician generally depends upon another to actually administer the drug, e.g., the patient in the home or nursing staff in the hospital.

Section 2052 prohibits nonphysicians from practicing medicine.

The Nursing Practice Act (Business & Professions Code, Chapter 6)

Section 2725 defines registered nursing as those functions which help people cope with difficulties in daily living which are associated with their actual or potential health or illness problems or the treatment thereof **which require a substantial amount of scientific knowledge or technical skill.**

Section 2725(b)(1) exempts the RN from the prohibition against administering a controlled substance to anyone who is not under his or her treatment for a disease.

Section 2795 prohibits not only the practice of registered nursing by nonnurses, but also prohibits such persons from offering to practice nursing or to use any title, sign, or device to indicate that he or she is qualified to practice or is practicing nursing.

Both the **Medical Practice Act (Section 2058)** and the **Nursing Practice Act (Section 2727)** provide for the administration of family remedies (nonprescription drugs) in the home by family members and household employees. [A previous opinion (62 Ops. Cal. Atty. Gen.) suggesting that this exception applied only to members of the family was disapproved by the opinion.]

Self-Treatment with Nonprescription Drugs Lawful

In addition to considering the above laws, the Attorney General took into account that there is no prohibition against self-treatment by means of nonprescription drugs (we frequently diagnose and treat ourselves for colds, headaches and the like with aspirin and other over-the-counter drugs) but self-treatment does not extend to controlled substances, which may be obtained lawfully only through one authorized to prescribe such drugs.

Administration of Drugs

In respect to home care companions, certified nurse assistants, or home health aides administering drugs to an employer in the employer's home, the Attorney General was concerned with whether what they do with drugs constitutes either the practice of medicine or of nursing. It was concluded that the Nursing Practice Act prohibits these persons from administering controlled substances and from administering drugs in ways which require substantial scientific knowledge such as by hypodermic injection, but does not prohibit their administering nonprescription drugs or, at the employer's request, assisting the employer in taking any oral medication. Additionally, the Medical Practice Act prohibits these persons from participating by advice or otherwise, in the diagnosis or decisions (made by the employer or his or her physician) regarding the choice of a nonprescription drug to use, or its dosage.

Nasogastric Tube and Gastrostomy Feeding

In deciding the issue of who may lawfully engage in nasogastric tube and gastrostomy feeding of the employer in the employer's home the Attorney General reviewed the steps for performing the two

procedures and considered the potential for complications such as the introduction of fluid into the patient's lungs with consequent patient harm. The conclusion reached was that safe performance of these procedures requires a substantial amount of scientific knowledge and technical skill and are, therefore, not suitable for performance by the home care companion.